

REMARKS

The title of the application has been amended to correct a typographical error. The specification has been amended to insert the serial number of a related patent application. Claim 10 has been amended to correct a typographical error. No new matter has been introduced by the aforementioned amendments. The claims have in no way been narrowed by virtue of these amendments and so these amendments should not be interpreted as narrowing the claimed invention for purposes of any determination under the doctrine of equivalents.

Claims 1-18 are pending in the present application. In the Office Action, claims 1 and 4-5 were rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Tiedemann, et al (WO 98/35514). Claims 2-3 and 6-9 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Tiedemann in view of Gilhousen (WO 95/03652). Claims 14 and 17-18 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Tiedemann in view of Shilling (U.S. Patent No. 5,410,568). Claims 10-13 and 15-16 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Tiedemann and Gilhousen and further in view of Shilling. The Examiner's rejections are respectfully traversed.

Tiedemann is concerned with high-speed data transmission on a forward link in a wireless telecommunications system. Tiedemann teaches that the forward link transmissions can be classified into two classes. The first class contains unscheduled tasks, such as voice communications, which are not scheduled because of intolerance to additional processing delay. The second class encompasses scheduled tasks that can tolerate additional processing and queuing delay, such as data communications. See Tiedemann, page 11, ll. 11-19. The demand for the forward link continuously changes over time, in part due to variations in the level of voice activities, *i.e.* unscheduled tasks, and so the data transmission, *i.e.* scheduled tasks, should be

dynamically adjusted to match the available forward link capacity of the cell. See Tiedemann, page 5, ll. 9-21. Thus, Tiedemann teaches transmitting data using a primary code channel and one or more secondary code channels. Small amounts of data are transmitted immediately on the primary code channel and additional secondary code channels may be assigned to increase the forward link transmission rate when larger amounts of data are transmitted. See Tiedemann, page 8, ll. 3-8.

With regard to independent claim 1, the Examiner alleges that assigning additional secondary code channels, as described at lines 3-8 on page 8 of Tiedemann, is the functional equivalent of performing an in-sector handoff of the user from the second code to the first code. Applicants respectfully disagree. As discussed above, Tiedemann teaches assigning secondary code channels in addition to the primary code channel and so does not teach performing a handoff from the primary code channel to a secondary code channel. Furthermore, Tiedemann teaches that a code channel that has been assigned as a primary code channel is not assigned as a secondary code channel. See Tiedemann, page 28, ll. 8-10. Thus, Applicants respectfully submit that Tiedemann fails to teach or suggest performing an in-sector handoff of the user from the second code to the first code.

For at least the aforementioned reasons, Applicants submit that claim 1, as well as claims 4-5 depending therefrom, are not anticipated by Tiedemann and request that the Examiner's rejections of claims 1 and 4-5 under 35 U.S.C. § 102(b) be withdrawn.

Applicants further submit that the pending claims are not obvious in view of the cited references. To establish a *prima facie* case of obviousness, the prior art reference (or references when combined) must teach or suggest all the claim limitations. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (CCPA 1974). As discussed above, Tiedemann does not teach or suggest handing

off the user from the second code to the first code, as set forth in independent claims 1, 6, 10, and 14. Moreover, as admitted by the Examiner, Tiedemann fails to teach or suggest assigning the second code to a different subspace (as set forth in claims 6 and 10) and assigning codes in the second subspace to one of a plurality of users on a time shared basis (as set forth in claims 10 and 14).

The Examiner relies upon the secondary references, Gilhousen and Shilling, to teach assigning a second code to a different subspace and assigning codes on a time shared basis, respectively. However, neither of the secondary references remedy the fundamental deficiency of the primary reference, *i.e.* the failure to teach or suggest handing off the user from the second code to the first code. Thus, Applicants submit that the prior art references fail to teach or suggest all the claim limitations and, for at least this reason, the pending claims are not obvious over the cited references, either alone or in combination.

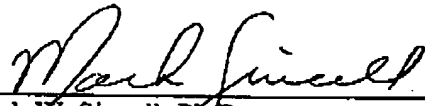
Furthermore, Applicants respectfully submit that Tiedemann teaches away from the claimed invention. In particular, Tiedemann teaches that the primary code channel is dedicated to a remote station for the duration of the communication with the cell (Tiedemann, page 29, ll. 14-16) and, as discussed above, the primary code channel is not assigned as a secondary code channel (Tiedemann page 28, ll. 8-10). Thus, Tiedemann appears to teach away from handing off the user from the second code to the first code. It is by now well established that teaching away by the prior art constitutes *prima facie* evidence that the claimed invention is not obvious. *See, inter alia, In re Fine*, 5 U.S.P.Q.2d (BNA) 1596, 1599 (Fed. Cir. 1988); *In re Nielson*, 2 U.S.P.Q.2d (BNA) 1525, 1528 (Fed. Cir. 1987); *In re Hedges*, 228 U.S.P.Q. (BNA) 685, 687 (Fed. Cir. 1986).

For at least the aforementioned reasons, Applicants respectfully submit that claims 1, 6, 10, and 14, as well as all claims depending therefrom, are not obvious in view of the cited references. Accordingly, Applicants request that the Examiner's rejections of claims 2-3 and 6-18 under 35 U.S.C. § 103(a) be withdrawn.

For the aforementioned reasons, it is respectfully submitted that all claims pending in the present application are in condition for allowance. The Examiner is invited to contact the undersigned at (713) 934-4052 with any questions, comments or suggestions relating to the referenced patent application.

Respectfully submitted,

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